



## Senate

General Assembly

February Session, 2008

**File No. 74**

Senate Bill No. 294

*Senate, March 20, 2008*

The Committee on Transportation reported through SEN. DEFRONZO of the 6th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

### **AN ACT PROHIBITING OPEN ALCOHOLIC BEVERAGE CONTAINERS IN MOTOR VEHICLES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2008*) (a) For the purposes of  
2 this section:

3 (1) "Alcoholic beverage" has the same meaning as provided in  
4 section 30-1 of the general statutes;

5 (2) "Highway" has the same meaning as provided in section 14-1 of  
6 the 2008 supplement to the general statutes;

7 (3) "Open alcoholic beverage container" means a bottle, can or other  
8 receptacle that (A) contains any amount of an alcoholic beverage, and  
9 (B) (i) is open or has a broken seal, or (ii) the contents of which are  
10 partially removed;

11 (4) "Passenger" means any occupant of a motor vehicle other than  
12 the operator; and

13 (5) "Passenger area" means (A) the area designed to seat the  
 14 operator of and any passenger in a motor vehicle while such vehicle is  
 15 being operated on a highway, or (B) any area of a motor vehicle that is  
 16 readily accessible to such operator or passenger; except that, in a motor  
 17 vehicle not equipped with a trunk, "passenger area" does not include a  
 18 locked glove compartment, the area behind the last upright seat closest  
 19 to the rear of the motor vehicle or an area not normally occupied by  
 20 the operator of or passengers in such motor vehicle.

21 (b) No person shall possess an open alcoholic beverage container  
 22 within the passenger area of a motor vehicle while such motor vehicle  
 23 is on any highway or highway right-of-way in this state.

24 (c) The provisions of subsection (b) of this section do not apply to (1)  
 25 a passenger in a motor vehicle designed, maintained and primarily  
 26 used for the transportation of persons for hire, (2) a passenger in the  
 27 living quarters of a recreational vehicle, as defined in section 14-1 of  
 28 the 2008 supplement to the general statutes, or (3) a passenger in a  
 29 privately-owned motor vehicle operated by a person in the course of  
 30 such person's usual employment transporting passengers at the  
 31 direction of such person's employer.

32 (d) Any person who violates the provisions of subsection (b) of this  
 33 section shall commit an infraction and be fined ninety dollars for a first  
 34 violation, be fined two hundred dollars for a second violation and be  
 35 fined five hundred dollars for any subsequent violation.

36 Sec. 2. (NEW) (*Effective July 1, 2008*) Commencing July 1, 2008, and  
 37 annually thereafter, the sum of four million dollars shall be transferred  
 38 from the General Fund to the Special Transportation Fund, and shall  
 39 be deemed appropriated to the Department of Transportation, for  
 40 safety enforcement and hazard elimination programs.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2008</i>	New section
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Sec. 2	<i>July 1, 2008</i>	New section
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**TRA**      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Department of Transportation	GF - Revenue Loss	4,000,000	4,000,000
Department of Transportation	TF - See Below	See Below	See Below
Judicial Dept.	GF - Revenue Gain	Greater than \$100,000	Greater than \$100,000

Note: GF=General Fund; TF=Transportation Fund

#### **Municipal Impact:** None

#### **Explanation**

The bill transfers \$4 million per year from the resources of the General Fund to the Special Transportation Fund and appropriates them to the Department of Transportation for safety enforcement and hazard elimination programs. Currently, these programs are partially paid for from a diversion of federal highway construction grants funds as a result of Connecticut not meeting federal open container law requirements.

The bill is intended to bring Connecticut into compliance with the federal open container laws, which will stop the funds being redirected from construction programs to highway safety programs. The General Fund transfer is expected to replace the funds previously diverted to highway safety programs. The bill should also allow the state to allocate 100% of the federal highway construction grant funds for construction projects. The Department of Transportation currently uses the diverted funds for hazard elimination projects and for making grants to municipalities and other state agencies for enforcing DUI laws, purchasing related equipment, and sobriety checkpoints.

The bill is anticipated to generate annual revenues greater than

\$100,000 from the infraction and violations that the bill establishes that may be imposed on any person (with certain exceptions under the bill) who possesses an open alcoholic beverage container in the passenger area of a motor vehicle while the vehicle is on a Connecticut highway or right of way. Since the bill does not include this new fee among fines, fees, and surcharges that must be deposited into the Special Transportation Fund, any revenues generated under the bill would be deposited into the General Fund.

Any person who is alleged to have committed a second or subsequent offense would need to appear in court under the bill since the bill's violations are not included in the statutory list of violations that can be paid through the mail. It is anticipated that the Judicial Department would not require additional resources to handle cases (involving second and subsequent offenses) under the bill.

### ***The Out Years***

#### ***State Impact:***

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$	FY 13 \$
Department of Transportation	GF - Revenue Loss	4,000,000	4,000,000	4,000,000
Judicial Dept.	GF - Revenue Gain	Greater than \$100,000	Greater than \$100,000	Greater than \$100,000

Note: GF=General Fund; TF=Transportation Fund

***Municipal Impact:*** None

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**OLR Bill Analysis****SB 294*****AN ACT PROHIBITING OPEN ALCOHOLIC BEVERAGE  
CONTAINERS IN MOTOR VEHICLES.*****SUMMARY:**

This bill makes it illegal for anyone to possess an open alcoholic beverage container in the passenger area of a motor vehicle while the vehicle is on a Connecticut highway or highway right-of-way (i.e., road shoulders).

A first offense is an infraction subject to a \$90 fine. A second or subsequent offense is a violation, not an infraction, and a court appearance is required. The fine is \$200 for a second offense and \$500 for a subsequent offense.

The bill does not apply to passengers in a:

1. motor vehicle designed, maintained, and primarily used for the transporting people for hire (e.g., buses, taxicabs, and limousines);
2. the living quarters of a recreational vehicle (e.g., campers, camp trailers, and motor homes); or
3. a privately owned motor vehicle driven by a person in the course of his or her usual employment who is transporting the passengers at his or her employer's direction.

The bill requires, beginning July 1, 2008, \$4 million to be transferred annually from the General Fund to the Special Transportation Fund for the Department of Transportation to use for safety enforcement and hazard elimination programs.

EFFECTIVE DATE: October 1, 2008, except the appropriation for safety enforcement and hazard elimination is effective on July 1, 2008.

### **OPEN ALCOHOLIC BEVERAGE CONTAINER**

The bill defines an “open alcoholic beverage container” as a bottle, can, or other receptacle that (1) contains any amount of an alcoholic beverage and that (2) is open or has a broken seal, or the contents of which are partially removed.

### **PASSENGER AREA**

The bill defines a vehicle's “passenger area” as (1) the area designed to seat the operator of and any passenger in a motor vehicle being operated on a highway or (2) any area readily accessible to the operator or passenger. But the bill specifies that in a motor vehicle not equipped with a trunk, “passenger area” does not include a locked glove compartment, the area behind the last upright seat, or an area not normally occupied by the operator or passengers.

### **BACKGROUND**

#### ***Related Law Prohibiting Consumption of Alcohol While Driving***

It is a class C misdemeanor, punishable by a fine of up to \$300, imprisonment for up to three months, or both, for anyone to consume alcohol while driving a motor vehicle on a public highway, any road of a specially chartered municipal association or highway district, in a parking area for 10 cars or more, on any school property, or on any private road on which a municipal traffic authority has established a speed limit pursuant to state law (CGS § 53a-213).

#### ***Related Law Permitting Patron to Take Home Open Wine Bottle***

State law permits a restaurant patron to remove one unsealed bottle of wine for off-premises consumption from a restaurant as long as the patron has purchased a full course meal and consumed a portion of the wine with the meal on the restaurant premises (CGS § 30-22).

#### ***Federal Requirements Regarding Open Container Laws***

Under federal law (23 USC § 154), states must have an open

container law meeting certain criteria or else undergo a diversion of a small percentage of federal highway construction grant funds to their highway safety grant programs. The states do not lose the funds; they are redirected from the construction programs to the safety grant program, including alcohol impaired driving enforcement. Connecticut currently undergoes this annual penalty transfer. The Department of Transportation uses the transferred funds for hazard elimination projects and for making grants to municipalities and other state agencies for impaired driving enforcement, including sobriety checkpoints.

To comply with the federal mandate, and thus avoid the penalty transfer, a state's law must:

1. prohibit both possession of any open alcoholic beverage container and consumption of any alcoholic beverage;
2. apply to containers with any measurable amount of alcoholic beverage in them;
3. apply to all open alcoholic beverage containers and all alcoholic beverages, including beer, wine, and spirits that contain 0.5% or more of alcohol by volume (thus including 3.2% beer);
4. apply to all vehicle occupants, except passengers of vehicles designed, maintained, or used primarily for transporting people for compensation (i.e., buses, taxicabs, and limousines) or the living quarters of motor homes;
5. apply to vehicles on a public highway or the right-of-way of a public highway; and
6. require primary enforcement, rather than requiring probable cause that another violation had been committed before allowing enforcement of the open container law (i.e., secondary enforcement).

Federal regulations define a vehicle's passenger area as the area



designed to seat the driver and passengers while the motor vehicle is in operation and any area readily accessible to the driver or a passenger while seated, including the glove compartment. An open container is defined as any bottle, can, or other receptacle that (1) contains any amount of alcoholic beverage and (2) is open or has a broken seal or the contents of which are partially removed. Alcoholic beverages include (1) beer, ale, and other similarly fermented beverages containing 0.5% or more alcohol by volume brewed or produced in whole or part from malt or any malt substitute; (2) wine of not less than 0.5% alcohol by volume; or (3) distilled spirits known as ethyl alcohol, ethanol, or spirits of wine in any form including any dilutions or mixtures (23 CFR § 1270).

The federal regulations specify that a compliant open container law may contain an exception allowing an open alcohol container to be in a locked glove compartment or placed behind the last upright seat or in an area not normally occupied by the driver or passengers in a vehicle that is not equipped with a trunk.

### ***Definition of “Highway”***

State law defines a highway as any state or other public highway, road, street, avenue, alley, driveway, parkway, or place under the control of the state or any political subdivision of the state, dedicated, appropriated, or opened to public travel or other use.

### ***Definition of “Alcoholic Beverage”***

By law, an alcoholic beverage includes the four varieties of liquor defined in law (alcohol, beer, spirits, and wine) and every liquid or solid containing alcohol, spirits, wine, or beer and capable of being consumed by a human being for beverage purposes. It does not include any liquid or solid containing less than 0.5% of alcohol by volume.

## **COMMITTEE ACTION**

Transportation Committee

Joint Favorable

Yea    32    Nay   1    (03/06/2008)